

# **REQUEST FOR PROPOSAL**

## **505-18-CC00012**

### **General Communications and Marketing Consultant Services Contract**

**There will be an optional pre-proposal conference for this solicitation.**

**April 11, 2018**

**Vendor Registration:** In order to receive an award, the firm must be a registered vendor with eVA.

**Note:** This public body does not discriminate against faith based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law.



Virginia Department of Rail and Public Transportation

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## Request for Proposal (RFP) Cover Sheet

RFP #: **505-18-CC00012**

Issue Date: **March 29, 2018**

Title: **General Communications and Marketing Consultant Services Contract**

Commodity Code: **91522 – Communications and Marketing Services  
91826 – Communications: Public Relations Consulting  
91876 – Marketing Consulting  
96153 – Marketing Services (Incl. Distribution, Research, Sales Promotion)**

Issuing Agency: **Commonwealth of Virginia  
Department of Rail and Public Transportation  
600 East Main Street, Suite 2102  
Richmond, VA 23219**

Initial Period of Contract: **Three years from date of award**

Proposals  
Will be received until: **April 25, 2018  
3:00 p.m.**

All inquiries must be  
directed in writing to: **Melissa Myers, Procurement Officer  
melissa.myers@drpt.virginia.gov**

**No proposal will be accepted after the closing date and time unless the closing date and time is modified by written addendum. Proposals must be sealed and mailed or hand delivered to the appropriate delivery address identified above.**

**In compliance with this RFP and all conditions imposed in this RFP, the undersigned firm offers and agrees to furnish the services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation, and hereby certifies that all information provided below and in any schedule attached hereto is true, correct, and complete.**

**Name and Address of Firm:**

_____	_____
_____	Date
_____	_____
_____	Signature in Ink
_____	_____
_____	Printed or Typed Name of Above
_____	_____
FEI/FIN Number	Phone
_____	_____
E-mail	Fax

**Note: An Optional Pre-Proposal Conference will be held on April 11, 2018 at 10 a.m. See Section VIII for more information.**

**Small Businesses, Women-Owned Businesses, and Minority-Owned Businesses are encouraged to participate.**

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# REQUEST FOR PROPOSAL

# General Communications and Marketing Consultant Services Contract

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## **General Communications and Marketing Consultant (GCMC) Services Contract**

### **I. PURPOSE**

The Department of Rail and Public Transportation (DRPT), an agency of the Commonwealth of Virginia, is issuing this Request for Proposal (RFP) to solicit sealed proposals for the purchase of consultant services related to DRPT's marketing and communications needs. **It is the intent of DRPT to award to multiple qualified firms.**

### **II. CONTRACT AMOUNT AND TERM**

The initial contract term shall be for a period of three years, renewable for up to two successive one-year periods. The compensation of this contract is estimated to be \$5,000,000 (to be divided among qualified firms). The effective date of the contract will be determined at time of award.

### **III. BACKGROUND**

DRPT's communications and marketing activities promote transportation choices in Virginia, provide for public participation and feedback regarding the agency's activities, and communicate on the results achieved through investments in rail, transit and transportation demand management (TDM) programs.

General activities include the development and execution of DRPT's internal and external communication strategies; public participation opportunities; the production of informative public events, materials and resources; the coordination of local/regional transportation and congestion management plans; conducting employer and community outreach for major transportation initiatives; marketing for commuter and intercity passenger rail services; and the promotion of transportation choices to encourage the use of transit, carpooling, telework, freight and passenger rail services in Virginia.

### **IV. STATEMENT OF NEEDS**

The following functions to be provided relate to communication programs, projects and initiatives. The contractor shall furnish all labor, materials, etc. Services will be provided for DRPT's offices in Virginia and may cover any market in Virginia. Travel may be required for specific projects/events.

#### **A. Marketing Program**

- a.** Manage and/or expand marketing activities for programs operated by DRPT including but not limited to, Amtrak Virginia, Telework!VA and Try Transit Week. Activities may include the follow.
  - (i)** Campaign development
  - (ii)** Marketing and media planning
  - (iii)** Public relations, outreach and marketing support
  - (iv)** Develop and produce creative advertising
  - (v)** Brand management
  - (vi)** Develop partnerships, sponsorships and co-branding opportunities
  - (vii)** Recommend and provide support services, including creative development, for e-mail and web-based marketing
  - (viii)** Develop and implement educational strategies
  - (ix)** Maintain website updates
  - (x)** Develop and procure collateral materials, including electronic collateral
  - (xi)** Event planning

- (xii) Provide ongoing evaluation on effectiveness of marketing activities.

## **B. DRPT Study and Report Production**

- a. Design, draft copy for and manage the production and distribution of DRPT reports and publications including, but not limited to, the Annual Report, DRPT Business Plan, official reports, ridership and revenue reports, newsletters, brochures and fact sheets.
- b. Design and develop website content and materials for all DRPT websites, including sites dedicated to specific projects and initiatives.
- c. Update DRPT's graphic standards, including potential updates to the color palette, fonts and templates for presentations, reports, display panels and other materials.
- d. Develop and manage mailing lists and maintain contact lists for DRPT customers and stakeholder groups identified to receive DRPT publications.
- e. Other activities, as determined by DRPT.

## **C. DRPT Communication Initiatives**

- a. Conduct appropriate communications research, planning and development activities to support DRPT internal and external communication strategies.
- b. Identify and profile stakeholders and target audiences.
- c. Implement communication strategies as appropriate, including:
  - (i) Advertising
  - (ii) Creative Development and Branding
  - (iii) Community and Public Relations Programs
  - (iv) Public and Stakeholder Involvement/Outreach Programs
  - (v) Sales Promotion and Special Event Activities
  - (vi) Target Market/Community Outreach Programs
  - (vii) Training/Technical Assistance Programs
  - (viii) Marketing Research
- d. Develop communication plans for specific projects, including detailed timetables, public relations and outreach actions, and suggested media placement options, with the ability to provide a full range of communication materials for print, radio, television and internet outlets.
- e. Recommend, negotiate and place announcements in selected media within the program budget.
- f. Develop promotional materials for each outlet and ensure that materials are issued to the appropriate media according to the project timetable.
- g. Propose creative concepts for communication plan themes, draft and final copy, produce photography and video recordings as applicable, and develop the layout for all materials.
- h. Provide ancillary promotional services such as mailings and the creation/maintenance of mailing lists, in addition to the establishment of project hotlines and specialized websites as required.
- i. Provide all associated printing services for communication plan materials.
- j. Provide detailed evaluation of communication plans to highlight the results and effectiveness of each initiative or program.

## **D. Public Participation Program Support**

- a. Provide services to support the implementation of DRPT's annual public participation program for specific projects including, but not limited to:
  - (i) Develop public involvement plans for specific DRPT projects
  - (ii) Reserve space for and arranging the logistics for public meetings
  - (iii) Host and/or provide on-site staff support for public meetings as appropriate

- (iv) Draft and place advertisements and other relevant public announcements for public meetings
- (v) Develop handouts, presentations, video, audio and other support materials
- (vi) Arrange for specialty services such as translators, court reporters and security
- (vii) Compile public comments and producing public comment reports

#### **E. DRPT Brand Development**

- a. Develop a comprehensive set of graphic standards for DRPT to create a new cohesive and consistent overall presentation of DRPT.
- b. Develop elements including, but are not limited to, DRPT logo, color scheme, font, business card, envelope layout, presentation template, fax coversheet, report template, press release layout, media advisory layout and graphic standards manual.

#### **F. Promotional Items and Display Materials Development and Production**

- a. Provide DRPT with the ability to produce a full range of promotional items, to include DRPT logo items for internal and external audiences.
- b. Provide access to catalogues of items to choose from and manage the production process from the development of proofs to the delivery of materials.
- c. Provide access to general graphic design services to develop DRPT maps, posters, exhibit booth panels, signs and other display materials.
- d. Provide access to mapping services to include GIS mapping capability and the ability to produce folded paper maps, wall maps and interactive maps for use on websites. Maps should be formatted to also be used in PowerPoint presentations and reports.
- e. Provide access to printing services for the production of DRPT display materials in a variety of formats and materials including, but not limited to, magnetic display panels, foam core posters, transparencies and vinyl materials.
- f. Provide DRPT with the ability to acquire displays and display furnishings such as tabletop displays and modular booths, in addition to display pedestals, information desks, easels and other relevant display equipment.

#### **G. Media, Public Speaking and Communications Training**

- a. Provide access to a full range of media training, public speaking and/or communications training services for DRPT staff to include topics that focus on developing effective communication and presentation skills.
- b. Provide access to trainers for one-day sessions of in-person, specialized media training including specific DRPT message development, strategic preparation tools for interviews, individualized training to meet the needs of each attendee, at least two recorded on-camera interviews for playback and critique per attendee, role playing activities, video examples of interviews and other audio visual support materials to teach effective media relations. This strategy must be tailored to suit DRPT's media relations policy and business needs.  
After each media training session, provide a personalized approach and summary document for each attendee with individualized points to help that individual continue to improve after training is complete, as well as a DVD of the recorded interviews.
- c. Provide all materials necessary to carry out the services described above, including all audio visual equipment, camera equipment, lighting, recording and training materials.



## V. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

### PROPOSED PROCUREMENT SCHEDULE:

Issue Date of RFP	March 29, 2018
Pre-Proposal Conference	April 11, 2018
Deadline for receipt of Proposals	April 25, 2018
Oral Presentations (if needed)	Week of May 28 2018
Negotiations	Week of June 4, 2018
Proposed Contract Award	June 18, 2018
(Dependant upon timing of oral presentations)	

### GENERAL REQUIREMENTS

#### 1. RFP Response

The Offeror (“Offeror”) is the firm submitting the proposal, and for Federal Terms and Conditions, means Contractor as normally used in those terms and conditions. In order to be considered for selection, Offerors must submit a complete sealed written response to this RFP. One original of each proposal and three copies, each of which are marked “Copy,” must be submitted to DRPT in addition to one electronic version on a flash drive.

Proprietary information must be clearly marked as proprietary prior to submittal. If the Offeror wishes to submit a version of the proposal that has proprietary information redacted, the redacted version must be submitted in electronic format on a flash drive and must redact all proprietary information. Section numbers which are redacted must be identified as follows: Example: Section 3, paragraph B: “Redacted.” The Offeror is responsible for ensuring that the redacted version of the proposal is carefully edited, altered, and refined in order to protect and maintain complete confidentiality of protected information.

No other distribution of the written proposal shall be made by the Offeror.

The signed proposal must be returned in an envelope or package, sealed and identified as follows:

From: _____	4/25/2018	3:00 p.m.
Name of Offeror	Due Date	Time
_____	505-18-CC00012	
Street or Box Number	RFP No.	
_____	Communication/Marketing GPC	
City, State, Zip Code	RFP Title	

Name of Contract/Purchase Officer or Buyer **Melissa Myers**

Proposals must be received at the following location by April 25, 2018 at 3:00p.m

In addition, the Offeror may be required to make a subsequent oral presentation detailing how the Offeror would approach the specific program objectives outlined in the Statement of Needs.

All inquiries for information must be directed in writing to Melissa Myers, Procurement Officer at [melissa.myers@drpt.virginia.gov](mailto:melissa.myers@drpt.virginia.gov). No questions will be answered by phone or verbally. All questions must be received by April 13, 2018 at 3:45 p.m

DRPT reserves the right to ask any Offeror to submit information missing from its offer, to clarify its offer, and to submit additional information which DRPT deems desirable, and does not affect quality, quantity, price or delivery.

## **2. Written Proposal Preparation**

- A.** Proposals shall be signed by an authorized representative of the Offeror. All information requested must be submitted. Failure to submit all information requested may result in DRPT requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals, which are substantially incomplete or lack key information, may be rejected by DRPT at its discretion.
- B.** Proposals must be organized in the order in which the requirements are presented in the RFP. All pages of the proposal must be numbered. Each section in the proposal must reference, by requirement section and subsection, the corresponding section of the RFP. It is also helpful to repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the requirement section and subsection must be repeated at the top of the next page. The proposal must contain a table of contents which cross-references the RFP requirements.

Information which the Offeror desires to present that does not fall within any of the requirements of the RFP must be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.

- C.** Proposals should be prepared simply and economically, providing straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Each copy of the proposal must be in a single volume where practical. Elaborate brochures and other representations beyond that sufficient to present a complete and effective proposal are neither required nor desired. **No proposal, in its entirety, should exceed 100 pages one-sided.**
- D.** Responding firms should include examples of collateral and other demonstrated work for clients, and may provide examples through electronic format

## **SPECIFIC PROPOSAL REQUIREMENTS**

Proposals must be as thorough and detailed as possible so that DRPT may properly evaluate the Offeror's capabilities to provide the required services. Offerors are required to submit the following items in order for their proposal to be considered complete.

Proposals shall be binding upon the Offeror for 120 days following the proposal due date. If the proposal is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled. Every effort will be made by DRPT to provide status information during the selection process.

**RFP Cover Sheet** – The RFP Cover Sheet which is page three of this RFP shall be completely filled out and signed as required.

**State Corporation Commission (SCC) Identification Number** – See Attachment B - Special Terms and Conditions for the SCC Identification Number reporting requirement.

**Tab 1 Understanding of Work and Plan for Providing Services** – The Offeror must provide a detailed description of its understanding of the services to be provided with descriptions of the approach and procedures employed on similar projects elsewhere. The Offeror must describe the process it will follow to respond to a specific purchase order request from DRPT. The Offeror must also describe the management procedures it will follow to oversee work by its personnel and work by subcontractors on multiple purchase orders simultaneously.

**Tab 2 Experience and Qualifications** – The Offeror must describe the skills and qualifications it has available to perform the various types of tasks described in the Statement of Needs. The key personnel who could be assigned to these various tasks must be identified. The Offeror must demonstrate that it has sufficient personnel with the various types of skills needed to staff the purchase orders when needed. The Offeror shall provide all of the following information concerning its company, subcontractor and personnel qualifications.

- A. A detailed statement indicating the organizational structure under which the firm proposes to conduct business. If more than one firm is involved in this project, state the type of arrangement between the firms and the percentage of work to be performed by each.
- B. A list of the key personnel including subcontractors who could be assigned to the various tasks identified. Give the relevant experience record of each and include resumes and any certifications.
- C. A list of references to include name, address, telephone number, email address, project, and dollar amount of project.
- D. A Certificate of Insurance with at least the minimum amount of coverage cited in the Insurance clause in Attachment A - Required General Terms and Conditions of the RFP.

**Tab 3 Department of Small Business and Supplier Diversity (DSBSD) Small Businesses, Women-Owned Businesses, and Minority-Owned Businesses (SWAM) Participation** – The Offeror shall indicate the percentage of DSBSD SWAM participation and specify the types of work to be performed by DSBSD SWAM subcontractors. In order to be considered for the selection of this RFP, the Offeror must include Attachment C - Small Business Subcontracting Plan in each copy of the proposal.

- A. If the Offeror on the contract is a DSBSD-certified small business, the Offeror shall indicate such in Section A of Attachment C. This shall include DSBSD-certified women-owned and minority-owned businesses that meet the small business definition and have received the DSBSD small-business certification.

- B.** If the Offeror is not a DSBSD-certified small business, the Offeror is required to identify the portions of the contract the Offeror plans to subcontract to DSBSD-certified small business by completing and returning Section B of Attachment C.

All DSBSD SWAM Offerors or subcontractors must be certified with DSBSD. If the Offeror or subcontractor is not certified, they must demonstrate that they are eligible to be certified, and must receive such certification prior to the solicitation due date. DSBSD can be contacted at (804) 786-5560. The DSBSD SWAM goal for this contract is 15 percent. If the prime Offeror is DSBSD SWAM certified, they will receive full credit for planned involvement.

**Tab 4 Contact Person** – The primary Offeror must identify the name, telephone number and e-mail address for the contact person who will be responsible for coordinating the efforts and personnel of all parties and/or subcontractor involved in the proposal.

**Tab 5 Staffing and Pricing Plan** – Offerors shall identify all staff positions by person and **actual** hourly rates (base rate, overhead and profit listed separately along with the total rate) in Attachment D - Price Schedule for the seven potential services described in the Statement of Needs, and listed pursuant to Tab 2 to be fully loaded with all direct salaries and general overhead. Rates cannot be based on a cost plus percentage of cost per §2.2-4331, Code of Virginia. Final pricing/rates will be addressed in the negotiation phase. Transportation costs, travel, and per diem rates must not be included in determining the fixed billable hourly rates. Proposals must provide for a diversity of team members and hourly rates, given the varied nature of the potential work assignments under this contract.

## **VI. EVALUATION AND AWARD CRITERIA**

**A. EVALUATION CRITERIA** - Multiple Offerors will be qualified and selected by DRPT's Selection Committee as a GCMC based on the following weighted criteria:

<u>FOR SERVICES</u>	<u>POINT VALUE</u>
1. Qualifications and experience of Offeror staff to be assigned to perform the services	30 points
2. Commitment to DSBSD SWAM Utilization	20 points
3. Specific plans or methodology to be used to perform services	35 points
4. Price	15 points
Total Points	<hr/> 100 points

**B AWARD TO MULTIPLE OFFERORS** - DRPT reserves the right to make multiple awards as a result of this solicitation. Selection shall be made of multiple Offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation criteria included in the RFP. Negotiations shall be conducted with the Offerors selected. After negotiations have been conducted with each Offeror selected, the agency shall select the Offerors, which, in its opinion, have made the best proposal and shall award the contract to those Offerors. Should DRPT determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.

**C. AWARD DOCUMENTS AND CANCELLATION** - The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and of the Offeror's proposal as negotiated. In the event there is a conflict between the Offeror's proposal and the requirements, terms, and conditions of the solicitation, the requirements, terms, and conditions of the solicitation shall apply.

DRPT may cancel this RFP or reject proposals at any time prior to an award and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous. (*Code of Virginia* § 2.2-4359(D).)

**D. DELAYS IN AWARD:** Delays in award of a contract beyond the anticipated starting date may result in a change in the contract period indicated in the solicitation. If this situation occurs, DRPT reserves the right to award a contract covering the period equal to or less than the initial term indicated in the solicitation.

## **VII. REPORTING AND DELIVERY REQUIREMENTS**

**A. TASK ORDERS** - Work associated with this contract must be conducted within an approved task order for which a purchase order will be issued and authorized by the DRPT Procurement Officer. No work is authorized to begin until a purchase order has been issued through eVA. The Offeror and DRPT are expected to negotiate the scope, budget, schedule and deliverables for each task and the manner in which payment will be made. The payment method must be agreed to and documented within the task order. The Offeror is fully expected to strictly adhere to the mutually agreed upon levels of effort and costs and complete the scope of work within the agreed upon budget and schedule. The Offeror will not be compensated for unauthorized work performed outside the approved scope of work.

- a. Fully loaded fixed hourly rates proposed and accepted via the Offeror's initial response to the RFP and included in any negotiated Offeror responses may be used in individual task orders; however, the total quantity of hours, the job category, and the related project work plans for any work efforts may be subject to negotiations.
- b. To provide the most flexibility in work assignments, task orders may be issued as fixed price task orders or time and materials (fixed billable hourly rates) task orders. Task orders may have a combination of attributes listed above.
- c. Fixed price task order project work plans approved by DRPT, a task order may be required to specify the maximum hours allowed by job category.
- d. Reimbursement for travel (mileage, meals or lodging) and non-salary direct costs are not allowed, unless approved in writing, in advance, as part of a task order. In those cases where travel allowance and non-salary direct costs are authorized, reimbursement shall be in accordance with the Commonwealth's Travel Guidelines in effect at the time of travel. The Travel Guidelines can be found on the Virginia Department of Accounts website at: [http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335-2011.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335-2011.pdf).

**B. TASK ORDER SCHEDULE** - The Offeror is required to develop a detailed task schedule as part of the task order. Once task order activities have been defined at the time of task order initiation, their relationships shall be identified, start and end dates set, and budget controls established. At the sole discretion of DRPT, the task order completion date may be extended past the originally agreed upon completion date. Extension requests must be sent to the DRPT Procurement Officer and Program Manager no later than 30 days before the original completion date.

**C. PROGRESS REPORTS** – Offerors must meet all due dates on all tasks assigned. To provide feedback to DRPT concerning this requirement, the Offeror shall submit monthly progress reports providing detailed information on the status of the work effort on each of the various project tasks. The progress reports shall include total authorized funds and expended funds to date. It shall summarize all work efforts in the reporting period including personnel and hourly utilization. It shall also discuss any anticipated difficulties and proposed resolution.

**D. SWAM AND OTHER REPORTING REQUIREMENTS** – See Attachment B - Special Terms and Conditions for additional reporting requirements.

Quarterly Reporting Schedule

QUARTER	REPORTING PERIOD	DATE DUE TO PROCUREMENT OFFICER*
1 <sup>st</sup>	July 1 – September 30	October 15
2 <sup>nd</sup>	October 1 – December 31	January 15
3 <sup>rd</sup>	January 1 – March 31	April 15
4 <sup>th</sup>	April 1 – June 30	July 15

\*Next business day if 15<sup>th</sup> of the month is a weekend or holiday

**E. MEETINGS AND REVIEWS** - DRPT may hold an initial conference with the Offeror at a place and time selected by DRPT for the purpose of reviewing the Offeror's schedules, procedures, methods, and to clarify any ambiguities that may then exist. The Offeror's Principal Officer and others requested by DRPT shall attend the conference. DRPT may request additional reviews during the contract period to evaluate vendor performance and provide feedback.

**VIII. OPTIONAL PRE-PROPOSAL CONFERENCE** - An optional pre-proposal conference will be held on **April 11 at 10:00 a.m.** at the in the Main Street Centre building located at 600 E. Main Street, 12th Floor conference room North, Richmond, Virginia 23219. The purpose of this conference is to allow potential Offerors an opportunity to present questions and obtain clarification relative to any facet of this solicitation. The telephone number for directions to the conference location is 804-786-4440.

While attendance at this pre-proposal conference is not required in order to submit a response to this solicitation, attendance is strongly recommended.

Each firm should bring a copy of the solicitation. Any changes resulting from this conference will be issued as a written addendum to the RFP.

**IX. ATTACHMENTS**

Attachment A - Required General Terms and Conditions (**Do not return with proposal**)

Attachment B - Special Terms and Conditions (**Do not return with proposal**)

Attachment C - Department of Small Business and Supplier Diversity (DSBSD) Small Business Subcontracting Plan (**Return with proposal**)

Attachment D - Price Schedule (**Return with proposal**)

Attachment E - Quarterly SWAM Report (**Do not return with proposal**)

Attachment F - Report of Orders Received From Additional Users (**Do not return with proposal**)

Attachment G - Disadvantaged Business Enterprises (DBE) Subcontractor Report (**Return with proposal**)

Attachment H – SCC form (**Return with proposal**)

Attachment I – Federal Terms and conditions and certifications (**Return with proposal**)

**X. REQUIRED GENERAL TERMS AND CONDITIONS** - Please see Attachment A - Required General Terms and Conditions.

**XI. SPECIAL TERMS AND CONDITIONS** - Please see Attachment B - Special Terms and Conditions.

## Attachment A

### REQUIRED GENERAL TERMS AND CONDITIONS

#### 1.

**VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at [www.eva.virginia.gov](http://www.eva.virginia.gov) under "Vendors Manual" on the vendors tab.

B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

C. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.
- e. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.

2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or



inducements from any other (bidder/offeree), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Applicable for all contracts over \$10,000:

By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

F. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs** (Insert wording below appropriate to the solicitation type as indicated):

1. **(For Invitation For Bids):** Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
2. **(For Request For Proposals):** Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

I. **CLARIFICATION OF TERMS:** If any prospective (bidder/offeree) has questions about the specifications or other solicitation documents, the prospective (bidder/offeree) should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. **PAYMENT:**

1. **To Prime Contractor:**

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.

- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351,. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor awarded a contract under this solicitation is hereby obligated:
  - (1) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS*, *CLARIFICATION OF TERMS*, *PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. **QUALIFICATIONS OF (BIDDERS/OFFERORS):** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The Commonwealth further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the Commonwealth that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
    - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

If sales or deliveries against the contract are not exempt, the contractor shall be responsible for the payment of such taxes unless the tax law specifically imposes the tax upon the buying entity and prohibits the contractor from offering a tax-included price.

**(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)**

- R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict (bidders/offerors) to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the

purpose intended, shall be accepted. The (bidder/offeree) is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the (bidder/offeree) clearly indicates in its (bid/proposal) that the product offered is an equivalent product, such (bid/proposal) will be considered to offer the brand name product referenced in the solicitation.

**(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)**

- S. **TRANSPORTATION AND PACKAGING:** By submitting their (bids/proposals), all (bidders/offerees) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

**(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)**

- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

**MINIMUM INSURANCE COVERAGES AND LIMITS:**

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

**Profession/Service**

**Limits**

Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	\$2,150,000 per occurrence, \$4,250,000 aggregate
(Limits increase each July 1 through fiscal year 2031 per	<i>Code of Virginia</i> § 8.01-581.15.)
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA VBO ([www.eva.virginia.gov](http://www.eva.virginia.gov)) for a minimum of 10 days.

V. **DRUG-FREE WORKPLACE:** Applicable for all contracts over \$10,000:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:** The eVA Internet electronic procurement solution, web site portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

- a. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:
  - (i) DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
  - (ii) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.
- b. Refer to Special Term and Condition "eVA Orders and Contracts" to identify the number of purchase orders that will be issued as a result of this solicitation/contract with the eVA transaction fee specified above assessed for each order.

For orders issued prior to July 1, 2014, the vendor transaction fees can be found at [www.eVA.virginia.gov](http://www.eVA.virginia.gov).

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within 60 days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this agreement.
- Z. **SET-ASIDES IN ACCORDANCE WITH THE SMALL BUSINESS ENHANCEMENT AWARD PRIORITY:** This solicitation is set-aside for award priority to DSBSD-certified micro businesses or small businesses when designated as “Micro Business Set-Aside Award Priority” or “Small Business Set-Aside Award Priority” accordingly in the solicitation. DSBSD-certified micro businesses or small businesses also includes DSBSD-certified women-owned and minority-owned businesses when they have received the DSBSD small business certification. For purposes of award, bidders/offers shall be deemed micro businesses or small businesses if and only if they are certified as such by DSBSD on the due date for receipt of bids/proposals.
- AA. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, bidders/offers shall state bid/offer prices in US dollars.
- BB. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

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## ATTACHMENT B

### SPECIAL TERMS AND CONDITIONS

**1. CHANGES TO THE RATES ON THE PRICE SCHEDULE:** Rates may be revised by mutual agreement of the Department of Rail and Public Transportation (DRPT) and the Offeror 60 days prior to the renewal periods starting date. If DRPT elects to exercise the option to revise rates for the two one-year renewal periods the contract prices for the increase shall not exceed the contract prices stated for the third year of the original contract increased/decreased by more than the percentage increase/decrease of the Services Category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest 12 months for which statistics are available. The Offeror shall convey in writing its request to raise/lower prices to DRPT no later than 60 days prior to the renewal periods starting date. Applications for price increases shall be substantiated in writing with the request. DRPT shall have sole discretion in its decision to allow price increases.

**2. RENEWAL OF CONTRACT:** This contract may be renewed upon written agreement of both parties for two successive one-year periods, under the terms of the current contract, at approximately 60 days prior to the expiration.

**3. CANCELLATION OF CONTRACT:** DRPT reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Offeror. After the initial three-year contract period, the resulting contract may be terminated by either party, without penalty, upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Offeror of the obligation to deliver any outstanding orders issued prior to the effective date of cancellation.

**4. AUDIT:** The Offeror shall retain all books, records, and other documents relative to this contract for five years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. DRPT, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

**5. KEY PERSONNEL/SUBCONTRACTOR:** People identified in terms of this RFP as “key personnel” who will work on the service contract, must continue to work on this contract for its duration so long as they continue to be employed by the Offeror unless removed from work on the contract with the consent of DRPT. DRPT reserves the right to approve any personnel or subcontractor proposed for the work described in this RFP and/or any subsequent purchase order resulting from this RFP. DRPT will provide written justification to the Offeror when approval is not granted. DRPT will provide the Offeror with copies of all written approvals.

**6. PRIME OFFEROR RESPONSIBILITIES FOR SUBCONTRACTS:** No portion of the work shall be subcontracted with a subcontractor not already included on the contract without a prior request from the Offeror and written consent of the DRPT Procurement Manager. In the event that the Offeror desires to subcontract some part of the work specified herein, the Offeror shall furnish the Procurement Manager and Program Manager with the names, qualifications and experience of their proposed subcontractors. The Offeror shall, however, remain fully liable and responsible for the work to be done by its subcontractors and shall assure compliance with all requirements of the contract.

**7. ADDITIONAL USERS OF CONTRACT:** This procurement is being conducted on behalf of all agencies/facilities within the Transportation Secretariat and on behalf of grantees (Agencies Funded by DRPT). Grantees may be added or deleted at anytime during the period of the contract only by written contract modification issued by DRPT. Such modification shall name the specific grantee added or deleted and the effective date. The Offeror shall not honor an order citing the resulting contract unless the ordering entity has been added by written contract modification.

**8. REPORT OF ORDERS RECEIVED FROM ADDITIONAL USERS:** The Offeror shall provide Attachment G - Report of Orders Received from Additional Users to DRPT quarterly. This report shall reflect orders received from additional users on the contract for the respective quarter. The Offeror must remit the report within 15 days after the end of each quarterly calendar reporting period even if there was no activity.

**9. SMALL BUSINESS SUBCONTRACTING PLAN AND EVIDENCE OF COMPLIANCE:**

Each prime Offeror who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to DRPT on a monthly basis, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. The Offeror shall use Attachment E - Monthly SWAM Report or other form approved by DRPT to report amounts paid to SWAM businesses on a monthly basis as well as paid to date. Said attachment or other approved form shall be submitted by the 15<sup>th</sup> of the month for the prior month to Ashley Nusbaum, Purchasing Manager, at ashley.nusbaum@drpt.virginia.gov. When such business has been subcontracted to these firms and upon completion of the contract, the Offeror agrees to furnish the purchasing office at a minimum the following information: name of firm with the DSBSD certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment may be withheld until compliance with the plan is received and confirmed by the agency or institution. DRPT reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.

**10. DISADVANTAGED BUSINESS ENTERPRISES (DBE) SUBCONTRACTOR REPORT:** The Offeror shall provide to DRPT quarterly Attachment H - DBE Subcontractor Report. This report shall reflect DBE related information on subcontractors utilized on the contract. The Offeror must remit the report within 15 days after the end of each quarterly calendar reporting period.

**11. APPROPRIATE LICENSURE, CERTIFICATIONS, AND/OR CREDENTIALS:** The Offeror must submit copies of appropriate licensure, certifications, and/or credentials subsequently upon award and as requested by DRPT.

**12. CLAIMS:** The Offeror shall be responsible for all damage and expense to person or property caused by its negligent activities including, without limitation, those which it chooses to deliver through its subcontractors, agents or employees, in connection with the services required under this Agreement. Further, it is expressly understood that the Offeror shall defend and hold harmless the Commonwealth of Virginia, DRPT, its officers, agents, employees and any other authorized users from and against any and all damages, claims, suits, judgments, expenses, actions, and costs of every name and description caused by any negligent act or omission in the performance by the Offeror, including, without limitation, those which it chooses to deliver through its subcontractors, agents or employees, of the services under this Agreement.

**13. CONTRACTUAL CLAIMS AND DISPUTES:** Contractual claims arising after final payment shall be governed by § 2.2-4363(A) of the *Code of Virginia*. Claims shall be submitted to the Director of DRPT who will render a decision within 30 days. Contractual disputes arising during the course of performance shall be submitted to the CFO of DRPT who will make a decision in 30 working days, which will be final. Vendors will not be precluded from filing a claim at the conclusion of performance as a result of the decision made during the course of contract performance.

**14. ADVERTISEMENT:** In the event a contract is awarded for supplies, equipment, or services resulting from this proposal, no indication of such sales or services to DRPT will be used in product literature. The Offeror shall not state in any of its advertising or product literature that DRPT has purchased or uses any of its products or services, and the Offeror shall not include DRPT in any client list in advertising and promotional materials.



**15. INTELLECTUAL PROPERTY RIGHTS:** DRPT shall have exclusive rights to all data and intellectual property generated in the course of the project. Intellectual property includes all inventions subject to the United States (U.S.) Patent System. This shall be inclusive but not limited to, new processes, materials, compounds and chemicals, and all creations subject to the U.S. Copyright Act of 1976, as amended, including but not limited to printed material, software, drawings, blueprints, and compilations such as electronic databases. Furthermore, DRPT shall have all rights, title, and interest in or to any invention reduced to practice pursuant to a resulting contract. Proposals shall recognize the requirements of public sector agencies and of public policy generally, including the Freedom of Information Act, State statutes and agency rules on release of public records, and data confidentiality.

All copyright material created pursuant to this contract shall be considered work made for hire and shall belong exclusively to DRPT. Neither DRPT, nor the Offeror intends that any copyright material created pursuant to the contract, together with any other copyright material with which it may be combined or used, be a “joint work” under the copyright laws. In the case that either in whole or part of any such copyright material not be deemed work made for hire, or is deemed a joint work, then Offeror agrees to assign and does hereby irrevocably assign its copyright interest therein to DRPT. DRPT may reasonably request documents required for the purpose of acknowledging or implementing such assignment.

The Offeror warrants that no individual, other than regular employees and subcontractors of the Offeror, DRPT regular employees, agents, or assigns or additional users, while working within the scope of their employment or contracted duty, shall participate in the creation of any intellectual property pursuant to the contract. If this situation should arise, such individual and his or her employer, if any, must agree in writing to assign the intellectual property rights, as described herein, for work performed under this contract to DRPT either directly or through the Offeror.

DRPT shall have all rights, title and interest in or to any invention reduced to practice pursuant to this contract. The Offeror shall not patent any invention conceived in the course of performing this contract. The Offeror hereby agrees that, notwithstanding anything else in this contract, in the event of any breach of this contract by DRPT, the remedies of the Offeror shall not include any right to rescind or otherwise revoke or invalidate the provisions of this section. Similarly, no termination of this contract by DRPT shall have the effect of rescinding the provisions of this section.

DRPT is only entitled to the intellectual property rights for deliverables and associated documentation produced by the Offeror for which DRPT has fully paid the Offeror as the contract is completed or as the contract is terminated for any reason.

Copyright or pre-existing work of the Offeror shall remain the property of the Offeror. The Offeror grants to DRPT a perpetual, royalty-free, irrevocable, worldwide, non-exclusive license to use such pre-existing work in connection with exercising the rights of ownership granted to DRPT pursuant to this section.

Notwithstanding anything herein to the contrary, DRPT acknowledges that as part of the Offeror’s provision of services hereunder, the Offeror may license third-party software or acquire proprietary works of authorship (collectively referred to as “products”), which have been developed by third parties. DRPT must approve the third-party license agreements and the acquisition of these third-party products prior to their use by the Offeror and DRPT agrees that these products will remain the sole property of the third party.

The Offeror shall grant DRPT license to use all software developed by the Offeror under this contract in other applications within Virginia as DRPT sees fit. Should the Offeror desire to re-use software developed under this contract for other projects (both DRPT contracts and others), DRPT must be notified in writing 60 days prior to such use. Furthermore, DRPT shall be justly compensated for the re-use of such software.

Compensation shall be negotiated and agreed upon prior to DRPT releasing software rights. Typically, DRPT prefers increased software capabilities and/or functionality instead of monetary compensation.

**16. PATENT RIGHTS:** If any invention, improvement or discovery of the Offeror or any of its subcontractors is conceived or first actually reduced to practice in the course of or under this project which invention, improvement or discovery may be patentable under the Patent Laws of the United States of America or any foreign country, the Offeror shall immediately notify DRPT and provide a detailed report. The rights and responsibilities of the Offeror, its subcontractors, and DRPT with respect to such invention will be determined in accordance with applicable Federal laws, regulations, policies, and waivers thereof.

**17. PROTECTION OF PERSONS AND PROPERTY:**

- A. The Offeror expressly undertakes both directly and through its subcontractors, to take every precaution at all times for the protection of persons and property which may come on the building site or be affected by the Offeror's operation in connection with the work.
- B. The Offeror shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.
- C. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* shall apply to all work under this contract.
- D. The Offeror shall continuously maintain adequate protection of all work from damage and shall protect the owner's property from injury or loss arising in connection with this contract. The Offeror should make good any such damage, injury, or loss, except such as may be directly due to errors in the contract documents or caused by agents or employees of the owner. The Offeror shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. The Offeror shall provide and maintain all passageways, guard fences, lights, and other facilities for protection required by public authorities, local conditions, any of the contract documents or erected for the fulfillment of his obligations for the protection of persons and property.
- E. In an emergency affecting the safety or life of persons or of the work, or of the adjoining property, the Offeror, without special instruction or authorization from the owner, shall act, at its discretion, to prevent such threatened loss or injury. Also, should the Offeror, to prevent threatened loss or injury, be instructed or authorized to act by the owner, the Offeror shall so act immediately, without appeal. Any additional compensation or extension of time claimed by the Offeror on account of any emergency work shall be determined as provided by Attachment A – Required General Terms and Conditions.

**18. MANNER OF CONDUCTING WORK AT JOB SITE:** All work shall be performed according to the industry standards and to the complete satisfaction of DRPT.

- A. The Offeror shall be responsible for the conduct of all personnel while at the job site. All personnel involved with the work shall obey all rules and regulations of DRPT.
- B. Sexual harassment of any employee, DRPT or Offeror, will not be tolerated and is to be reported immediately to the DRPT Program Manager.

All work to be conducted by the Offeror in any facility shall be coordinated in advance with the DRPT Program Manager. If applicable, the Offeror shall coordinate his/her work efforts with other existing

Offeror/agency work efforts through the DRPT Program Manager. All Offeror work shall take place on non-holiday weekdays between the hours of 8:00 A.M. and 5:00 P.M, unless otherwise approved by the DRPT Program Manager.

**19. POLICY OF EQUAL EMPLOYMENT:** DRPT is an equal opportunity/affirmative action employer. DRPT encourages all vendors to establish and maintain a policy to ensure equal opportunity employment.

**20. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, an offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its proposal the identification number issued to it by the State Corporation Commission (SCC). Any offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its proposal a statement describing why the offeror is not required to be so authorized. Indicate the above information Attachment I – SCC Form. Offeror agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation Attachment I - SCC Form) is streamlined and not definitive, and the Commonwealth’s use and acceptance of such form, or its acceptance of Offeror’s statement describing why the Offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Offeror as demonstrating compliance.

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## ATTACHMENT C

### Virginia Department of Small Business and Supplier Diversity (SBSD) SMALL BUSINESS SUBCONTRACTING PLAN

#### Definitions

**Small Business:** Small business means a business, independently owned or operated by one or more persons who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law, which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. Note: This shall not exclude DSBSD-certified women-owned and DSBSD-certified minority-owned businesses when they have received DSBSD small business certification.

**Women-Owned Business:** Women-owned business means a business concern that is at least 51 percent owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law.

**Minority-Owned Business:** Minority-owned business means a business concern that is at least 51 percent owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

**All small businesses must be certified by DSBSD by the due date of the solicitation to participate in the Small Businesses, Women-Owned Businesses, and Minority-Owned Businesses (SWAM) program. Certification applications are available through DSBSD online at [www.DSBSD.virginia.gov](http://www.DSBSD.virginia.gov) (Customer Service).**

**Offeror Name:** \_\_\_\_\_

**Preparer Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Instructions:** (Failure to complete and submit this form may result in your proposal not being considered.)

- A. If the Offeror is certified by DSBSD as a small business, complete only Section A of this form. This shall include DSBSD-certified women-owned and DSBSD-certified minority-owned businesses when they have received DSBSD small business certification.
- B. If the Offeror is not certified by DSBSD as a small business and plans to subcontract part of this contract with a DSBSD-certified business, complete only Section B of this form.
- C. If the Offeror is not certified by DSBSD as a small business and cannot identify any subcontracting opportunities to subcontract part of this contract with a DSBSD-certified business, only provide the information requested in Section C of this form.

**Section A**

If the Offeror is certified by DSBSD, the Offeror is certified as a (check only one below):

\_\_\_\_\_ Small Business

\_\_\_\_\_ Small and Women-owned Business

\_\_\_\_\_ Small and Minority-owned Business

Certification Number: \_\_\_\_\_ Certification Date: \_\_\_\_\_

**Section B**

Populate the table below to show the firm's plans for utilization of DSBSD-certified small businesses in the performance of this contract. This shall include DSBSD-certified women-owned and DSBSD-certified minority-owned businesses that meet the small business definition and have received the DSBSD small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

**B. Plans for Utilization of DSBSD-Certified Small Businesses for this Procurement**

<b>Small Business Name &amp; Address</b>  <b>DSBSD Certificate #</b>	<b>Status if Small Business is also: Women (W), Minority (M)</b>	<b>Contact Person, Telephone &amp; Email</b>	<b>Type of Goods and/or Services</b>	<b>Planned Involvement During Initial Period of the Contract</b>	<b>Planned Contract Dollars During Initial Period of the Contract</b>
<b>Totals \$</b>					

## Section C

Respond to how the Offeror has met or exceeded **at least two** of the following indicators within the past 24 months. The response may include any good faith efforts made regarding this procurement.

### C. **Good Faith Effort Indicators by the Offeror**

1. Identify areas of work the business has subcontracted to DSBSD-certified small businesses for other contracts. Include company names, dates, dollar amounts, and percentages on a per contract basis.
2. List research efforts conducted by the business in the past to locate DSBSD-certified small businesses by advertising in publications or in the classified section of the newspaper where small businesses are likely to see it. List specific publications and dates.
3. List small business outreach meetings, conferences, or workshops conducted by the firm to locate DSBSD-certified small businesses—including the dates, participation numbers, and results.
4. Provide documented correspondence (i.e., certified mail, email, receipt of fax transmissions, etc.) to small businesses from the lists provided by DSBSD and other outreach agencies and organizations which indicate the solicitation of such for utilization of subcontracting opportunities on other contracts for which the business has competed.
5. List areas of work which the business has subcontracted with DSBSD-certified small businesses for upcoming contracts—including the name of the business, certification number, dates, dollar amounts, and percentages on a per contract basis.
6. Provide documentation of any assistance offered to interested small businesses in obtaining bonds, lines of credit, and/or insurance for any present or past contracts the business has in place.
7. Provide documentation of follow-up on initial contacts with DSBSD-certified small businesses (e.g., telephone call logs, emails, certified letters, etc.). Be sure to list the small business name and dates of contact.

## Attachment D Price Schedule

[illegible]

## Travel Reimbursement

Reimbursement for travel (mileage, meals or lodging) is not allowed, unless approved in writing, in advance, as part of an approved Task Order. In those cases where travel allowance is authorized, travel reimbursement shall be in accordance with the Commonwealth's Travel Guidelines in effect at the time of travel. The Travel Guidelines can be found at:  
[http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335-2011.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335-2011.pdf)

**Note:** Non-salary direct costs will be paid subject to State Travel Regulation and prior approval of DRPT.



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## Quarterly SWAM Report

PRIME CONTRACTOR NAME  
CONTACT NAME  
TITLE/POSITION  
CONTRACTOR ADDRESS  
CONTRACTOR PHONE NUMBER  
EMAIL


MONTH/YEAR  
DATE SUBMITTED


[illegible]

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## ATTACHMENT F

### Report of Orders Received from Additional Users

## REPORT OF ORDERS RECEIVED FROM ADDITIONAL USERS

CONTRACTOR NAME  
CONTACT NAME  
TITLE/POSITION  
CONTRACTOR ADDRESS  
CONTRACTOR PHONE NUMBER  
EMAIL

QUARTER/YEAR  
DATE SUBMITTED

[illegible]

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## Disadvantaged Business Enterprises (DBE) Subcontractor Report

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## ATTACHMENT H

### State Corporation Commission Form

#### **Virginia State Corporation Commission (SCC) registration information. The Offeror:**

- ☐ is a corporation or other business entity with the following SCC identification number: \_\_\_\_\_ **-OR-**
- ☐ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**
- ☐ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the Offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from Offeror's out-of-state location) **-OR-**
- ☐ is an out-of-state business entity that is including with this proposal an opinion of legal counsel which accurately and completely discloses the undersigned Offeror's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

**\*\*NOTE\*\*** >> Check the following box if the firm has not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow the firm to submit the SCC identification number after the due date for proposals (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver): ☐



## **ATTACHMENT I**

### **FEDERAL TERMS AND CONDITIONS**

#### **Fly America Requirements**

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

#### **Energy Conservation**

All Contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

#### **Clean Water**

Applicability – All Contracts and Subcontracts over \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

#### **Lobbying**

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$150,000 Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 10465 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

#### **Access to Records and Reports**

Applicability – As shown below. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000) The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

### **Federal Changes**

All Contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract.

Contractor's failure to comply shall constitute a material breach of the contract.

### **Clean Air**

Applicability – All contracts over \$150,000. 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. 2) Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

**No Government Obligation to Third Parties** Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **Program Fraud and False or Fraudulent Statements or Related Acts**

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **Termination**

**Applicability** – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$150,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for

any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract closeout costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

#### **Government Wide Debarment and Suspension (Non Procurement)**

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <http://https.www.sam.gov,.proxy1.semalt.design> if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <http://https.www.sam.gov,.proxy1.semalt.design> if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debar, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

#### **Contracts Involving Federal Privacy Act Requirements**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a.

Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### **Civil Rights Requirements**

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA’s “Nondiscrimination” statute):

(1) FTA’s “Nondiscrimination” statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA “Nondiscrimination” statute’s prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program, b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance. (b)

DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with:

(a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001



and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.,

(2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20

. § 1681 et seq., (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25, and (3) Federal transit law, specifically 49

. § 5332, as stated in section a,

. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including:

(a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of “employer,” (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37, (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27, (c) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35, (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36, (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630,

(h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance, h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

### **Breaches and Dispute Resolution**

All contracts over \$150,000 Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient’s authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient’s CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient’s CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **Patent and Rights in Data**

Contracts Involving Experimental, Developmental, or Research Work (\$3,500 or less, except for construction contracts over \$2,000).

### **Patent Rights**

A. General. The Recipient agrees that:

(1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable: (a) Invention, (b) Improvement, or (c) Discovery, (2) The Federal Government's rights arise when the patent or patentable information is: (a) Conceived under the Project, or (b) Reduced to practice under the Project, and (3) When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the Recipient agrees to: (a) Notify FTA immediately, and (b) Provide a detailed report satisfactory to FTA,

B. Federal Rights. The Recipient agrees that:

(1) Its rights and responsibilities, and the rights and responsibilities of each Third Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and (2) Unless the Federal Government determines otherwise in writing, irrespective of the Recipient's status or the status of any Third Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual, the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in: (a) 35 U.S.C. § 200 et seq., and (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401, and

C. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:

(1) License fees and royalties for patents, patent applications, and inventions derived from the Project are program income, and (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing.

### **Rights in Data and Copyrights**

A. Definition of "Subject Data." means recorded information: (1) Copyright. Whether or not copyrighted, and (2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement,

B. Examples of “Subject Data.” Examples of “subject data”: (1) Include, but are not limited to:

(a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but

(2) Do not include: (a) Financial reports,

(b) Cost analyses, or (c) Other similar information used for Project administration,

C. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient’s Project supported by the Underlying Agreement: (1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) Permit others to do so, but (2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the Recipient’s own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government’s prior written consent for release,

D. Federal Rights in Data and Copyrights. The Recipient agrees that: (1) License Rights. The Recipient must provide a license to its “subject data” to the Federal Government, which license is: (a) Royalty-free, (b) Non-exclusive, and (c) Irrevocable, (2) Uses. The Federal Government’s license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and

E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA’s purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third Party Participants, therefore, the Recipient agrees that: (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet, (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request, (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third Party Participants at any tier of the Project, either FTA’s copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing, (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA, (5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes “subject data” and must be delivered as the Federal Government may direct, but (6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient’s use, and (b) Acquired with FTA capital program funding,

F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19: (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing,

G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that: (1) Violation by Recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and

(b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3

Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of: 1 The Federal Government's officers acting within the scope of their official duties, 2 The Federal Government's employees acting within the scope of their official duties, and 3 Federal Government's agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G(1) if: (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law,

H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either: (1) Implies a license to the Federal Government under any patent, or (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,

I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless: (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential," and

J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by:

(1) The Freedom of Information Act, 5 U.S.C. § 552,

(2) Another applicable Federal law requiring access to Project records, (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or

(4) Other applicable Federal regulations and guidance pertaining to access to Project records.

### **Disadvantaged Business Enterprise**

Contracts over \$3,500 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

### **Prompt payment**

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

### **Incorporation of Federal Transit Administration (FTA) Terms**

All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

### **Other Federal Requirements**

The following requirements are not federal clauses.

### **Full and Open Competition**

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

### **Prohibition Against Exclusionary or Discriminatory Specifications**

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

#### **Conformance with ITS National Architecture**

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, “FTA National Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455 etseq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

#### **Notification of Federal Participation**

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

#### **Interest of Members or Delegates to Congress**

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

#### **Ineligible Contractors and Subcontractors**

Any name appearing upon the Comptroller General’s list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General’s list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

#### **Other Contract Requirements**

To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those provisions attached hereto, and shall comply with the recipient’s Procurement Guidelines, available upon request from the recipient.

#### **Compliance with Federal Regulations**

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

## **Real Property**

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by FAST Act, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## **Access to Services for Persons with Limited English Proficiency**

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

## **Environmental Justice**

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

## **Environmental Protections**

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

## **Geographic Information and Related Spatial Data**

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

## **Geographic Preference**

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201 ).



### **Organizational Conflicts of Interest**

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and

(b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or

(b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

### **Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only**

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

### **Veterans Preference**

Veterans Preference. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

### **Safe Operation of Motor Vehicles**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned

or leased either by the Contractor or AGENCY.

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

**Catalog of Federal Domestic Assistance (CFDA) Identification Number**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

**CFDA number for the Federal Transportation Administration**

Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

## Federal Certifications

# **RAD PDF Developer License Active**

## **CERTIFICATION AND RESTRICTIONS ON LOBBYING**

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I, \_\_\_\_\_, hereby certify  
(Name and title of official)

On behalf of \_\_\_\_\_ that:  
(Name of Bidder/Company Name)

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

*This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.*

*The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.*

Name of Bidder/Company Name \_\_\_\_\_

Type or print name \_\_\_\_\_

Signature of authorized representative \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature of notary and SEAL \_\_\_\_\_

## GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

- (1) It will comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180,
- (2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
  - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
    - (1) Debarred,
    - (2) Suspended,
    - (3) Proposed for debarment,
    - (4) Declared ineligible,
    - (5) Voluntarily excluded, or
    - (6) Disqualified,
  - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
    - (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
    - (2) Violation of any Federal or State antitrust statute, or
    - (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
  - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
  - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
  - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a - 2.d above, it will promptly provide that information to FTA,

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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- f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
    - (1) Equals or exceeds \$25,000,
    - (2) Is for audit services, or
    - (3) Requires the consent of a Federal official, and
  - g. It will require that each covered lower tier contractor and subcontractor:
    - (1) Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
    - (2) Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
      - a. Debarred from participation in its federally funded Project,
      - b. Suspended from participation in its federally funded Project,
      - c. Proposed for debarment from participation in its federally funded Project,
      - d. Declared ineligible to participate in its federally funded Project,
      - e. Voluntarily excluded from participation in its federally funded Project, or
      - f. Disqualified from participation in its federally funded Project, and
3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

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Certification

Contractor \_\_\_\_\_

Signature of Authorized Official \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Name and Title of Contractor's Authorized Official \_\_\_\_\_